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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-94293; File No. SR-Phlx-2022-07]**

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Strategy Caps for Reversal and Conversion and Jelly Roll Strategies**

February 22, 2022

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 9, 2022, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx’s Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).”

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

The Exchange originally filed the proposed pricing changes on February 1, 2022 (SR-PHLX-2022-06). On February 9, 2022, the Exchange withdrew that filing and submitted this filing.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its pricing within Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are

Multiply Listed) (Excludes SPY).” Specifically, Phlx proposes to amend the daily strategy cap for reversal and conversion<sup>4</sup> and jelly roll<sup>5</sup> strategies.

Today, to qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange Trading Floor or as a Floor Qualified Contingent Cross Order.<sup>6</sup> Currently, the Exchange offers the following strategy caps:

<b>Floor Options Transactions - Multiply Listed Options</b>	<b>Strategy</b>	<b>Qualification</b>	<b>Daily/Monthly Cap</b>
Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer	dividend	executed on the same trading day in the same class of options when such members are trading: (1) In their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	\$1,100 (daily)

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<sup>4</sup> Reversal and conversion strategies are transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration. See Options 7, Section 4.

<sup>5</sup> A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. See Options 7, Section 4.

<sup>6</sup> See Phlx’s Pricing Schedule at Options 7, Section 4. A Floor Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. The term “qualified contingent trade” shall have the same meaning set forth in Options 3, Section 12(a)(3). See Options 8, Section 30(e).

Lead Market Maker, Market Maker, Professional, Firm and Broker-Dealer	reversal and conversion, merger, short stock interest, jelly roll, and box spread strategies	executed on the same trading day for all classes of options in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis. If transacted on an agency basis, the daily cap will apply per beneficial account.	\$1,000 (daily) if more than one class of options, \$700 (daily) if only in a single class of options
Per member organization	dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies (“Monthly Strategy Cap”)	combined executions in a month when trading in its own proprietary accounts	\$65,000 (monthly)

The Exchange offers strategy caps for various types of strategies, including dividend,<sup>7</sup> merger,<sup>8</sup> short stock interest,<sup>9</sup> reversal and conversion, jelly roll, and box spread<sup>10</sup>

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<sup>7</sup> A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Options 7, Section 4.

<sup>8</sup> A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Options 7, Section 4.

<sup>9</sup> A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Options 7, Section 4.

<sup>10</sup> A box spread strategy is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined

strategies. Of note, NDX, NDXP, and XND Options Transactions are excluded from strategy cap pricing.

Specifically, today, the Exchange offers a reversal and conversion, merger, short stock interest, jelly roll and box spread strategy cap, which is applicable to Lead Market Makers,<sup>11</sup> Market Makers,<sup>12</sup> Professionals,<sup>13</sup> Firms<sup>14</sup> and Broker-Dealers,<sup>15</sup> of \$1,000 (daily) if more than one class of options, and \$700 (daily) if only in a single class of

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with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. See Options 7, Section 4.

- <sup>11</sup> As provided in the Pricing Schedule within Options 7, Section 1(c), “The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11.”
- <sup>12</sup> As provided in the Pricing Schedule within Options 7, Section 1(c), “The term “Market Maker” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as on and Floor Market Makers.”
- <sup>13</sup> As provided in the Pricing Schedule within Options 7, Section 1(c), “The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).”
- <sup>14</sup> As provided in the Pricing Schedule within Options 7, Section 1(c), “The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.”
- <sup>15</sup> As provided in the Pricing Schedule within Options 7, Section 1(c), “The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.”

options.<sup>16</sup> The aforementioned strategy cap applies to reversal and conversion, merger, short stock interest, jelly roll and box spread strategies executed on the same trading day for all classes of options in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis.<sup>17</sup>

The Exchange is proposing to lower the daily strategy cap for Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers who execute reversal and conversion and jelly roll strategies on the same trading day. The Exchange proposes to cap reversal and conversion and jelly roll strategies for all classes of options in the aggregate when such members are trading (1) in their own proprietary accounts; or (2) on an agency basis at \$200 daily. As is the case today, if transacted on an agency basis, the daily strategy cap would apply per beneficial account. The Exchange would not amend the current strategy caps for merger, short stock interest, and box spread strategies. The qualifications for the reversal and conversion and jelly roll strategy cap remains the same. Finally, the proposed daily strategy cap continues to apply to executions for all classes of options.

The Exchange believes that its proposal will incentivize members to transact a greater number of reversal and conversion and jelly roll strategies because the strategy cap would be lowered from \$1,000/\$700 daily (depending on the class of options) to

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<sup>16</sup> For example, if a Lead Market Maker executed reversal and conversion strategies only in AAPL options, and otherwise met the qualifications for a reversal and conversion cap, the proposed \$700 daily cap would apply. If the Lead Market Maker executed reversal and conversion strategies in AAPL and SPY options, and otherwise met the qualifications for a reversal and conversion cap, the proposed \$1,000 daily cap would apply.

<sup>17</sup> If transacted on an agency basis, the daily cap applies per beneficial account.

\$200 daily.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>20</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>21</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>20</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>21</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.<sup>22</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>23</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>24</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal to decrease the reversal and conversion and jelly roll strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers from \$1,000/\$700 daily (depending on the class of options) to \$200 daily, with the same qualifications as today, is reasonable because it will incentivize Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers to execute a greater number of reversal and conversion and jelly roll strategies for the opportunity to

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<sup>22</sup> See NetCoalition, at 534 - 535.

<sup>23</sup> Id. at 537.

<sup>24</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

qualify for the lower daily strategy cap. Strategy fee caps defray brokerage costs associated with executing strategy transactions.

Today, NYSE Arca, Inc. (“NYSE Arca”) and NYSE American LLC (“NYSE American”) cap certain strategy fees as low as \$200.<sup>25</sup> The Exchange believes that lowering the reversal and conversion and jelly roll strategy cap from \$1,000/\$700 daily (depending on the class of options) to \$200 daily will allow the Exchange to more effectively compete with other options exchanges who offer lower strategy caps for these two particular strategies. The Exchange notes that reversal and conversion and jelly roll strategies are popular strategies that may be transacted by any Phlx member or member organization. To the extent that the proposed change attracts more reversal and conversion and jelly roll strategy executions to the Exchange, this increased (open outcry) order flow would continue to make the Exchange a more competitive venue for order execution. To the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange’s overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to effectively compete for strategy trades. Finally, the Exchange cannot predict with certainty whether any, or how many, Phlx members and member organizations would avail themselves of this proposed

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<sup>25</sup> NYSE Arca and NYSE American applies a strategy cap of \$200 on transactions fees for qualifying strategies traded on the same trading day for those ATP Holders that trade at least 25,000 monthly billable contract sides in qualifying Strategy Executions. The strategies include: (a) Reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls.

fee change. The Exchange believes that Phlx members and member organizations that execute reversal and conversion and jelly roll strategies on the Exchange can achieve the proposed daily cap of \$200 and that this proposal may encourage Phlx members and member organizations to execute reversal and conversion and jelly roll strategies on the Exchange.

The Exchange's proposal to decrease the reversal and conversion and jelly roll strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers from \$1,000/\$700 daily (depending on the class of options) to \$200 daily, with the same qualifications as today, is equitable and not unfairly discriminatory because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion and jelly roll strategy cap provided those strategies are executed on the same trading day for all classes of options in the aggregate when such members are trading either in their own proprietary accounts or on an agency basis. While Customers<sup>26</sup> are not offered strategy caps, Customers are not assessed Options Transaction Charges within Options 7, Section 4.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>26</sup> As provided in the Pricing Schedule within Options 7, Section 1(c), "The term 'Customer' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ('OCC') which is not for the account of a broker or dealer or for the account of a 'Professional' (as that term is defined in Options 1, Section 1(b)(45))."

### Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Moreover, the proposal is designed to encourage Phlx members and member organizations to execute reversal and conversion and jelly roll strategies on the Exchange as a primary execution venue. To the extent that the proposed change attracts more reversal and conversion and jelly roll strategies to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution.

### Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

The Exchange's proposal to decrease the reversal and conversion and jelly roll strategy cap applicable to Lead Market Makers, Market Makers, Professionals, Firms and

Broker-Dealers from \$1,000/\$700 daily (depending on the class of options) to \$200 daily, with the same qualifications as today, does not impose an undue burden on competition because all Lead Market Makers, Market Makers, Professionals, Firms and Broker-Dealers may qualify for the reversal and conversion and jelly roll strategy cap provided those strategies are executed on the same trading day for all classes of options in the aggregate when such members are trading either in their own proprietary accounts or on an agency basis. While Customers are not offered strategy caps, Customers are not assessed Options Transaction Charges within Options 7, Section 4.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>27</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2022-07 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2022-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2022-07, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>28</sup> 17 CFR 200.30-3(a)(12).